

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13902, of McDonald's Corporation, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7205.3 to permit required off-street parking spaces serving a restaurant to be located elsewhere than on the site where the structure is located for a proposed addition and conversion of an office building to be used as a restaurant in a C-3-C District, at premises 1916 M Street, N.W., (Square 117, Lot 862).

HEARING DATE: January 26, 1983
DECISION DATE: February 2, 1983

FINDINGS OF FACT:

1. The subject site is located on the south side of M Street, between 19th and 20th Streets, N.W. and is known as premises 1916 M Street, N.W. It is zoned C-3-C.
2. The subject lot is rectangular in shape, topographically level and measures approximately 3,007 square feet in area.
3. The subject property is improved with a two story brick and masonry building that occupies all but approximately 682 square feet of paved area in the rear of the lot that has been used for three off-street parking spaces. The building is presently vacant but was last used as an office for a trade association.
4. Uses surrounding the subject site consist of high-rise commercial office buildings with ground floor retail. The immediate area, with the exception of the subject site, is built at or near the maximum zoning envelope. The subject property is abutted on each side by eight story office/retail structures. The structure to the east provides a 160 space underground garage which is entered from 19th Street. The structure on the immediate west provides a 145 space underground garage which is entered from 20th Street. No structure on the south side of M Street in the subject block has parking spaces which are entered from M Street.
5. The applicant proposes to renovate the existing structure, construct an addition to the rear and use the building as a restaurant. The building addition will occupy 837 square feet of gross floor area, be constructed on the

existing rear lot of the building and be used as a kitchen for the restaurant and a covered stairway to the second level. The addition will occupy space in the rear yard where three off-street parking spaces currently exist.

6. The proposed restaurant use requires three parking spaces. The applicant is seeking a special exception to locate the required parking spaces elsewhere than on the lot upon which the building is located.

7. The applicant proposes to locate the required parking space in a commercial parking garage at 1911 M Street, N.W. between 19th and 20th Streets. The garage entrance is located on M Street directly across the street and approximately 100 feet from the subject site. The use of the spaces will be obtained by virtue of a leasehold between the applicant and PMI, Incorporated, which operates the garage. A copy of the lease was submitted on January 27, 1983, and is marked as Exhibit No. 22 of the record.

8. The applicant's architect testified that the narrowness of the site prohibits the provision of underground parking due to the lack of adequate space necessary for ramp access to the spaces and room for maneuvering of vehicles on the subject site. The Board so finds.

9. The applicant's traffic expert testified that the existing parking spaces at the rear of the site are not practicable for the type of high-turnover use proposed by the applicant. Access to the existing spaces is via a network of alleys in the interior of the square which is entered from 19th and 20th Streets, both of which are one-way streets. The direction of travel on surrounding streets makes it impossible to get into the alley system without making a number of turns on approximately four surrounding blocks. The alleys are often blocked by delivery vehicles and illegal parking. There is no access to the parking to and from M Street, which would necessitate customers who park in the existing spaces to travel through the alleys and up a side street to reach M Street where the restaurant entrance is located. On the basis of this alley configuration, the absence of alley access from M Street, the convenient service nature of the proposed restaurant and the one-way configuration of the area street system, the transportation expert concluded that it was not practicable to consider the alley behind the subject site as either access to or a resource for parking for the subject site. The Board so finds.

10. The applicant testified that it is expected that ninety-five percent of the restaurant's customers will arrive at the site on foot, as opposed to five per cent who drive or arrive via public transportation or taxicabs. The patronage of the proposed restaurant is expected to be

generated by the employees and visitors to the existing commercial development in the area. The hours of operation of the restaurant are based on the volume of business and may vary from 7 A.M. to 9 P.M. to 7 A.M. to 12 A.M. The hours of operation of the parking garage where the applicant proposes to lease the required spaces are from 7 A.M. to 2:30 A.M., Monday through Thursday, 7 A.M. to 3:00 A.M. on Friday and Saturday, and 3 P.M. to 12 A.M. on Sunday.

11. Mr. Leon B. Zeiger, representing the Deli and Dog Restaurant at 1904 M Street, N.W., appeared at the public hearing in opposition to the subject application. After the applicant had presented its case, Mr. Zeiger contended that proper notice of the proceeding had not been afforded to all interested parties as evidenced by photographs marked as Exhibit No. 21, taken by him clearly depicting the absence of the notice of public hearing on the frontage of the restaurant. Posting of the property for fifteen days prior to the public hearing is required by Section 302.3 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment. Mr. Zeiger testified that the photos represent the ten days prior to the hearing that the property was not posted.

12. Counsel for the applicant objected to the submission of the photographs because there was no proof of when the photos were taken and there was no demonstration that any party had been damaged due to the absence of the notice. The record contains an affidavit of posting, marked as Exhibit No. 16 of the record, which evidences that the property was posted on January 7, 1983, and a photograph of that posting is attached to the affidavit.

13. The Board notes that at the beginning of the public hearing, the Chairman asked if there were any preliminary matters. None were noted with regard to this case at that time. The Board finds that Mr. Zeiger's contention should have been brought to the attention of the Board as a preliminary matter. The Board further finds that the photographs fail to satisfactorily demonstrate the lack of notice for the stated period of time or that any party had been prejudiced by the alleged violation. Mr. Zeiger's appearance and testimony at the hearing evidences that he had received adequate notice of the application. The Chairman denied Mr. Zeiger's request that the application not go forward as scheduled.

14. Mr. Zeiger testified that he opposed the granting of the requested relief because, in his opinion, the proposed parking spaces are not within 800 feet of the building's lot line, the proposed use would generate additional traffic congestion in the area, and there is nothing unique about the property. Mr. Zeiger testified that if the parking spaces leased by the applicant are

located on the lower levels of the garage, the person using those spaces would have to walk more than 800 feet to reach the proposed restaurant.

15. The record further contains a letter in opposition to the application which alleges that there are existing traffic circulation problems and ample fast food restaurants in the area and the addition of the proposed restaurant at this location would exacerbate those problems.

16. The Board finds no substantial evidence of record to support the allegations of the opposition. The property may be developed as a restaurant as a matter-of-right. The applicant traffic's expert provided evidence that there would be very little vehicular traffic generated, a finding adopted by the Board. The parking spaces are located directly across M Street to the north, well within 800 feet of the subject site. The Board notes that M Street is only ninety feet wide. The Board in computing the distance between the use and the accessory parking spaces, has historically relied upon the distance measured from the lot line of the principal use to the lot line of the site which contains the accessory parking spaces.

17. The Office of Planning, by memorandum dated January 18, 1983, recommended that the application be conditionally approved. The Office of Planning found that the proposed location of the off-site parking would not adversely affect the neighborhood and, given the access problems associated with rear yard parking, the requirements of Sub-section 7205.3 were met by the applicant. The Office of Planning recommended that the applicant provide a means of advertising the availability of the garage parking spaces to the customers of the restaurant. The Board concurs with the findings and conclusions of the OP report.

18. Advisory Neighborhood Commission 2B made no recommendation on the subject application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires the applicant to demonstrate through reliable, probative and substantial evidence and testimony, compliance with the requirements of Sub-sections 7205.3 and 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied.

The Board concludes that it is not practicable to locate the required parking spaces on the same lot as the proposed restaurant due to the narrow width of the lot as evidenced in Finding of Fact No. 8, the inappropriateness of

the existing alley system for appropriate ingress and egress and the existing traffic patterns of surrounding streets as evidenced in Finding of Fact No. 9. The Board further concludes that the location of the accessory parking spaces is reasonable and convenient to the proposed use and are located within 800 feet of the site as evidenced in Finding of Fact Nos. 7 and 10.

The Board further concludes that the application can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property in accordance with said Regulations and Map.

Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Three parking spaces located in the parking garage of the building at 1911 M Street, N.W. shall be reserved for the exclusive use of the customers and employees of McDonald's restaurant and shall be available and accessible for McDonald's use at all times that the restaurant is open.
2. A sign indicating the existence and location of a limited number of accessory parking spaces shall be conspicuously displayed in the window of the McDonald's restaurant.
3. The certificate of occupancy for the restaurant use shall be issued for a period of time not to exceed the term of the lease for the accessory parking spaces.

VOTE: 4-0 (Carrie L. Thornhill, Walter B. Lewis, William F. McIntosh and Charles R. Norris to GRANT; Douglas J. Patton not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAY 23 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL

RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING
ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS
AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH
PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE
OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES,
INVESTIGATIONS AND INSPECTIONS.

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